Lincoln D. Bandlow (SBN 170449)
LATHROP & GAGE LLP
1880 Century Park East, Suite 1004
Los Angeles, California 90067
Telephone: (310) 789-4600
Fax: (310) 789-4601
Email: lbandlow@lathropgage.com

Attorneys for Defendant
JOHN MCCAIN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

JACKSON BROWNE, an individual

Plaintiff,

vs.

JOHN MCCAIN, an individual; THE REPUBLICAN NATIONAL COMMITTEE, a non-profit political organization; THE OHIO REPUBLICAN PARTY; a non-profit political organization,

Defendants.

CASE NO. CV08-05334 RGK (Ex)

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

John McCain ("Defendant"), one of the defendants herein, appeals to the United States Court of Appeals for the Ninth Circuit from the Order of the District Court denying Defendant's Motion to Strike, entered in this case on February 20, 2009, a copy of which is attached hereto as Exhibit "A," and the Order of the District Court denying Defendant's Motion to Dismiss, entered in this case on February 20, 2009, a copy of which is attached hereto as Exhibit "B." In particular, Defendant appeals the following:

1. Defendant appeals the denial of Defendant's Motion to Strike made pursuant to Cal. Civil Code § 425.16 (the "Anti-SLAPP Motion"). The denial of an anti-SLAPP motion is immediately appealable pursuant to the collateral order doctrine. *See e.g., Batzel v. Smith*, 333 F.3d 1018, 1024-26 (9th Cir. 2003); *Zamani v. Carnes*, 491 F.3d 990, 994 (9th Cir. 2007).

2. Defendant appeals the denial of Defendant's Motion to Dismiss made pursuant to Federal Rule of Civil Procedure 12(b)(6) (the "Motion to Dismiss"). The Ninth Circuit has jurisdiction over the denial of the Anti-SLAPP motion and therefore may exercise appellate jurisdiction over the denial of the Motion to Dismiss because it involves issues that are "inextricably intertwined" with the issues pendent to the resolution of the properly raised appeal of the denial of the Anti-SLAPP Motion. *See, e.g., Batzel*, 333 F.3d at 1023; *Kwai Fun Wong v. U.S.*, 373 F. 3d 952, 960 (9th Cir. 2004); *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 287 (1940) (appellate review is not limited solely to the order appealed from; rather "[i]f insuperable objection to maintaining the [action] clearly appears, it may be dismissed and the litigation terminated"); *First Medical Health Plan, Inc. v. Vega-Ramos*, 479 F.3d 46, 50 (1st Cir. 2007) (*citation omitted)* (exercise of ancillary appellate jurisdiction appropriate where it "serves the salutatory purpose of saving both parties the needless

expense of further prosecution of the suit where the pleadings demonstrate that the suit is hopeless").[1]

Dated: March 10, 2009

LATHROP & GAGE LLP

By: _____
Lincoln D. Bandlow

Attorneys for Defendant
JOHN MCCAIN

[1] In the alternative, Defendant requests that the Ninth Circuit treat this Notice of Appeal as a petition for mandamus pursuant to 28 U.S.C. § 1651. *See Miller v. Gammie*, 335 F.3d 889, 895 (9th Cir. 2003).